

## R E M A R K S

Claims 1 - 112 are pending in the present application.

Claims 1 - 9, 50 - 59, 70 - 74, 77 and 101 are selected for examination.

Claims 10 - 49, 60 - 69, 75, 76, 78 - 100 and 102 - 112 have been withdrawn from consideration.

Of the claims selected for examination, claims 1, 50, 57, 70, 77 and 101 are independent.

### Interview

Thank you for the telephone interview on Monday April 5, 2004. In that interview we generally discussed the Information Disclosure Statements, the priority claim, and the case law supporting the 101 rejection, each of which is discussed in detail below.

### Information Disclosure Statements

Some of the references indicated on various Information Disclosure Statements have not yet been initialed.

- The IDS filed April 3, 2003
- The IDS filed February 18, 2004
- The IDS filed June 26, 2000 (second page only)
- The eIDS filed electronically May 19, 2003

As soon as practical, please initial these appropriate entries to indicate consideration of those references. If additional copies would be useful, we will gladly provide anything required.

### Priority

The priority information requested is unknown and/or is not readily available to the Applicants.

Moreover, as stated during the interview, Applicants at this point have no intention to rely on an earlier priority date in an effort to antedate any of the prior art of record.

### Section 112, ¶ 2 Rejections

Claims 9 and 55 are rejected as being indefinite. We traverse the Section 112, ¶ 2 rejection.

#### Claim 9

Claim 9 is deemed indefinite because "it is unclear how a filter differs from a rule".

Office Action, page 10.

Claim 9 does recite the term "*filter*" but does not recite the term "rule" or any variant of "rule".

Whether there is any overlap between the two terms (one of which is not even present in the rejected claim) does not render the claim indefinite. Whether a claim is indefinite requires a

determination of whether the claims at issue apprise one of ordinary skill in the art of their scope, or whether the bounds of the claims are so indeterminable as to be indefinite. The scope of the term "*filter*" is clear from the present disclosure.

#### Claim 55

Claim 55 has been amended to correct the antecedent basis error.

### **Section 101 Rejections**

Claims 1 - 9, 50 - 59 and 70 - 74 stand rejected as being non-statutory for not "involving the technological arts". We traverse the Section 101 rejection.

We reiterate the arguments presented in the response to the Office Action mailed March 11, 2003.

Thank you for providing your interpretations of the Federal Circuit's decisions in Alco Standard Corp. v. Tennessee Valley Authority and Musco Corp. v. Qualite. Please clarify your interpretations as requested below.

#### Alco Standard

We cited this decision for the proposition that "[t]he inclusion in a patent of a claim to a process that may be performed by a person, but that is also capable of being performed by a machine, is not fatal to patentability."

We interpret your response on pages 8 - 9 of the Office Action as an assertion that the claims at issue in Alco Standard were statutory because those claims "all included the technological arts" (e.g., ultrasonic sources). We also interpret your reconciliation of the "implicit" and explicit holdings of this case as an assertion that:

**a process claim may be performed by a person or a machine provided the claim also includes "the technological arts"**

If our understanding is incorrect, please clarify.

We apparently agree that this interpretation of Alco Standard is not explicitly set forth at any point in the Court's decision. If not, please indicate the portion of the appropriate decision.

#### Musco Corp.

We cited this decision for the proposition that "[t]he existence of mental steps in the claims ... do not, in and of themselves, invalidate the patent."

We interpret your response on page 9 of the Office Action as an assertion that the claims at issue in Musco Corp. were statutory because those claims "contained subject matter in the technological arts" (e.g., luminaire assembly unit). We also interpret your reconciliation of the "implicit" and explicit holdings of this case as an assertion that:

**a process claim may be performed mentally or by a machine provided the claim also includes "the technological arts"**

If our understanding is incorrect, please clarify.

We apparently agree that this interpretation of Musco Corp. is not explicitly set forth at any point in the Court's decision. If not, please indicate the portion of the appropriate decision.

**Section 102 and 103 Rejections  
Claim Amendments**

Claims 1 - 4, 6 - 7, 50, 52, 55 - 57, 59 and 70 - 74 are rejected as anticipated by Glickman.

Claims 1 - 4, 6 - 7, 9, 50, 56 - 59, 70 - 74, 77 and 101 are rejected as anticipated by Katz.

Various dependent claims are rejected based on combinations of Glickman or Katz in view of other references.

In summary, all independent claims (claims 1, 50, 57, 70, 77 and 101) have been amended to facilitate prosecution and issuance of the present application. Applicants intend to pursue the subject matter of the original claims in continuing applications.

Independent claims 1 and 77

Independent claims 1 and 77 have been amended to recite:

*scoring at least one supplemental product in said pool based at least on profit of the at least one possible supplemental product*

Dependent claim 4, which depends on claim 1, has been amended to eliminate a redundancy in limitations.

The references of record (e.g., Glickman, Katz) do not disclose or suggest such scoring.

Independent claims 70 and 101

Independent claims 70 and 101 have been amended to recite:

*selecting a supplemental product from a plurality of products based at least in part on profitability of said product and said tender amount; and*

The references of record (e.g., Glickman, Katz) do not disclose or suggest such selecting.

Independent claim 50

Independent claim 50 has been amended to recite:

*identifying a supplemental product based at least in part on profitability of said product;*

The references of record (e.g., Glickman, Katz) do not disclose or suggest such identifying.

Independent claim 57

Independent claim 57 has been amended to recite:

identifying a supplemental product based at least in part on profitability of said product;

The references of record (e.g., Glickman, Katz) do not disclose or suggest such identifying.

**Conclusion**

For the foregoing reasons it is submitted that all of the claims are now in condition for allowance and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remains any question regarding the present application or any of the cited references, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact Dean Alderucci at telephone number 203-461-7337 or via electronic mail at Alderucci@WalkerDigital.com.

Respectfully submitted,



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